

Remarks

Claims 1-19, 21 and 22 are pending. Claim 20 has been canceled.

The Examiner rejects claim 20 under 35 U.S.C. 112 for lacking antecedent basis for certain recited elements. Claim 20 has been canceled, rendering this rejection moot.

The Examiner rejects claims 1-17 and 19-22 under 35 U.S.C. 103 as being unpatentable over U.S. Patent No. 5,374,659 (“Gowan, Jr.”), U.S. Patent No. 5,834,019 (“Gergely et al.”), U.S. Patent No. 6,569,463 (“Patel et al.”), and U.S. Patent No. 5,980,882 (“Eichman”). Gowan, Gergely and Eichman were presented and discussed by the Examiner. Patel, the only new reference, is cited as showing that polyvinylpyrrolidone (PVP) is known to function as a solubilizer in certain pharmaceutical formulations. The Examiner maintains that it would have been obvious to select all of the elements as shown in the references to arrive at the instantly claimed liquid suspensions. Applicants respectfully traverse this rejection.

Patel is cited by the Examiner as teaching the use of PVP as a solubilizer in pharmaceutical dosage forms. Therefore, the Examiner alleges that it would have been obvious to incorporate PVP into liquid suspensions shown in the prior art. Patel, however, is limited to teachings about solid dosage forms and emphasizes that the purpose for the PVP is to act as a solubilizer for the active ingredient after ingestion (in vivo). The present invention, in contrast, is drawn to an aqueous suspension, not a solid dosage form. Furthermore, the PVP is present in the aqueous suspension for the purpose of preventing agglomeration of the suspended crystals prior to ingestion. The PVP in Patel performs a very different function in a fundamentally different setting. Hence, there is no basis for extracting the use of PVP as a solubilizer to add such an element into the claimed liquid suspension wherein this ingredient acts to prevent agglomeration.

Recently issued guidelines to Examiners regarding combinations of references emphasize that substituted elements must perform the same function and the results of the combination must have been predictable to those skilled in the art. Federal Register, Vol. 72, No. 195, pp. 57526-57535. The PVP taught in Patel does not perform the same function to prevent crystal agglomeration in aqueous suspensions as required in the claims herein. For this reason, Applicants believe the Examiner has failed to make a prima-facie showing of obviousness.

Applicants request that the Examiner reconsider and withdraw his obviousness rejections based on Gowan, Gergely, Patel and Eichman.

Applicants request that the Examiner contact the undersigned representative in the event that minor amendments will further prosecution.

Respectfully submitted,

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